

CHAPTER 10: RULES OF CONSTRUCTION; GENERAL PENALTY

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§ 10.01 TITLE OF CODE.

This codification of ordinances shall be designated as the City of Wayne Code of Ordinances and may be so cited.
(2002 Code, § 1-1)

§ 10.02 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

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§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

§ 10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.05 DEFINITIONS.

(A) *General rule.* Words and phrases shall be taken in their plain, ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) *Rules of construction.* In the construction of this code, the following definitions and rules of construction shall be observed, unless:

(1) Such construction would be inconsistent with the manifest intent of the Council; or

(2) Any of the following is defined in a subsequent definition section. If a term is defined in a subsequent chapter or section, such subsequent definition shall be applied throughout said chapter or section.

(C) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY, MUNICIPAL CORPORATION or **MUNICIPALITY.** The City of Wayne, Nebraska.

CITY COUNCIL or **GOVERNING BODY.** The legislative body of the City of Wayne, Nebraska.

CODE, THIS CODE or **THIS CODE OF ORDINANCES.** This city code as modified by amendment, revision and adoption of new titles, chapters or sections.

COUNTY. Wayne County, Nebraska.

ELECTOR. Every person of the constitutionally prescribed age or upwards, who shall have the right to vote for all officers to be elected to public office, and upon all questions and proposals, lawfully submitted to the voters at any and all elections authorized or provided for by the constitution or the laws of the state. No person shall be qualified to vote at any election unless such person shall be a resident of the state and shall have been properly registered with the election official of the county.

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FILING CLERK. The City Clerk.

GARBAGE. Kitchen refuse, decayed waste, dead animals or anything that may decompose and become offensive to the public health.

MAY. The act referred to is permissive.

MONTH. A calendar month.

NEB. RS. Nebraska Revised Statutes.

OATH. Includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath and, in such cases, the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

OFFICE, OFFICIALS, EMPLOYEE, COMMISSION or DEPARTMENT. An office, employee, commission or department of the city unless the context clearly requires otherwise.

OFFICER. Any elected or appointed official or member of any board or commission of the city.

PERSON. Includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies and associations. (Neb. RS 49-801(16))

PERSONAL PROPERTY. Includes but is not limited to supplies, materials and equipment used by or furnished to any officer, office, department, institution, board or other agency.

PRECEDING or FOLLOWING. Next before or next after, respectively.

PURCHASING or PURCHASE. The obtaining of personal property by sale, lease or other contractual means.

RUBBISH or TRASH. Discarded machinery, chips, pieces of wood, sticks, dead trees, branches, bottles, broken glass, crockery, tin cans, boxes, papers, rags or any other litter or debris that is not an immediate hazard to the health of the residents of the city.

SHALL. The act referred to is mandatory.

SIGNATURE or SUBSCRIPTION. Includes a mark when the person cannot write.

SOLID WASTE. Garbage, rubbish, trash and waste, as defined by the ordinances of the city.

STATE. The State of Nebraska.

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STREET. Streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public streets and ways in the city and shall embrace all parts constituting the designated right-of-way, unless otherwise defined in a subsequent chapter.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have ***SUBCHAPTERS***.

VOTER. An individual who is duly registered to vote and qualified by his or her place of residence as an elector in the general election for the office in question.

WRITTEN. Any representation of words, letters or figures, whether by printing or otherwise.

YEAR. A calendar year, unless otherwise expressed.

(2002 Code, §§ 1-2, 2-537, 30-5, 30-11, 66-1) (Ord. 98-14, passed 6-30-1998; Ord. 2013-32, passed 6-18-2013)

§ 10.06 RULES OF INTERPRETATION.

The construction of all ordinances of the city shall be by the following rules, unless that construction is plainly contradictory to the intent of the Mayor and City Council or of the context of the same ordinance.

(A) *Acts by assistants.* When a statute or ordinance requires an act to be done which, by law, an agent or deputy may act on behalf of the principal, the requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(B) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders and vice versa; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present or past tense shall include the future, if applicable, and vice versa.

(C) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.
(Ord. 2013-32, passed 6-18-2013)

§ 10.07 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

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§ 10.08 REFERENCE TO OTHER SECTIONS.

Whenever a section refers to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is materially altered by the amendment or revision.

§ 10.09 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of the city exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.10 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

§ 10.11 OFFICIAL TIME.

The official time, as established by applicable state/federal laws, shall be the official time within the city for the transaction of all city business.

§ 10.12 REASONABLE TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day is Sunday, it shall be excluded.

§ 10.13 ORDINANCES REPEALED.

This code contains all of the provisions of a general nature pertaining to the subjects enumerated and embraced in this code. All prior ordinances pertaining to the subjects treated by this code are

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repealed; except that, nothing shall affect any rights acquired under, actions involving or fines, penalties, forfeitures or liabilities incurred pursuant to those ordinances prior to repeal.

§ 10.14 ORDINANCES UNAFFECTED.

(A) Nothing in this code or the ordinance adopting this code shall be construed to repeal or otherwise affect the validity of any of the following:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this code;
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the city or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness;
- (3) Any contract or obligation assumed by the city;
- (4) Any ordinance fixing the salary of any city officer or employee;
- (5) Any right or franchise granted by the city;
- (6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving and the like any street or public way in the city;
- (7) Any appropriation ordinance;
- (8) Any ordinance which, by its own terms, is effective for a stated or limited term;
- (9) Any ordinance providing for local improvements and assessing taxes for such improvements;
- (10) Any zoning map amendment or zoning ordinance;
- (11) Any ordinance dedicating or accepting any subdivision plat;
- (12) Any ordinance describing or altering the boundaries of the city;
- (13) The administrative ordinances or resolutions of the city not in conflict or inconsistent with the provisions of this code;
- (14) Any ordinance levying or imposing taxes not included in this code;
- (15) Any ordinance establishing or prescribing street grades in the city; and
- (16) Any ordinance setting fees, rates or charges and not included in this code.

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(B) No such ordinance shall be construed to revive any ordinance or part of an ordinance that has been repealed by a subsequent ordinance which is repealed by this chapter; and all such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this code. (2002 Code, § 1-10)

§ 10.15 REPEAL OR MODIFICATION OF ORDINANCE; AMENDMENTS.

(A) (1) Whenever any ordinance or part of an ordinance is repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it to give effect thereto.

(2) No suit, proceedings, right, liability, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall, in any way, be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force, unless it is otherwise expressly provided.

(3) When any ordinance repealing a former ordinance, clause or provision is itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision, unless it is expressly provided.

(B) (1) All ordinances passed subsequent to this code of ordinances which amend, repeal or, in any way, affect this code of ordinances may be numbered in accordance with the numbering system of this code and printed for inclusion in the code. When subsequent ordinances repeal any chapter, section or division or any portion, such repealed portions may be excluded from the code by their omission from reprinted pages.

(2) Amendments to any of the provisions of this code should be made by amending such provisions by specific reference to the section of this code in substantially the following language: AThat section _____ of the Code of Ordinances, City of Wayne, Nebraska, is amended to read as follows: (set out new provisions in full).@

(3) When the Council desires to enact an ordinance of a general and permanent nature on a subject not heretofore existing in the code, which the Council desires to incorporate into the code, a section in substantially the following language shall be made a part of the ordinance: ASection . It is the intention of the Council, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Wayne, Nebraska, and the sections of this ordinance may be renumbered to accomplish such intention.@

(4) All sections, subchapters, chapters or other provisions of this code desired to be repealed should be specifically repealed by section or chapter number, as the case may be. (2002 Code, § 1-6)

Statutory reference:

Requirements for amendments and revisions, see Neb. RS 16-404

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§ 10.16 SECTION HISTORIES; STATUTORY REFERENCES.

(A) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute. Example: (Neb. RS 18-132)

(B) A statutory cite set forth as a statutory reference following the text of the section indicates that the reader should refer to that statute for further information. Example:

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

Inspection of public records, see Neb. RS 84-712 et seq.

§ 10.17 SUPPLEMENTATION OF CODE.

(A) By contract or by city personnel, supplements to this code shall be prepared from time to time. A supplement to the code shall include all substantive, permanent and general parts of ordinances passed by the Council during the period covered by the supplement and all changes made by the supplement in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages that have become obsolete or partially obsolete; and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(B) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by their omission from reprinted pages.

(C) When preparing a supplement to this code, the codifier (meaning the person authorized to prepare the supplement) may make formal, non-substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the code printed in the supplement, and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other divisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other division numbers;

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(4) Change the words this ordinance or words of the same meaning to this chapter, this subchapter, this division and the like, as the case may be, or to sections _____ to _____ (inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code); and

(5) Make other non-substantive changes necessary to preserve the original meanings of ordinance sections inserted into the code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

(2002 Code, § 1-7)

§ 10.99 GENERAL PENALTY.

Whenever in this code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided, such violation of any such provision of this code or any ordinance shall be punishable by a fine not exceeding \$500, except for Ch. 70, App. A, §§ 78-290 through 78-296, which, for a first offense, shall be punishable by a \$100 fine, which may be paid by waiver. If such person has one prior conviction within one year of the second offense, conviction of the second offense shall be punishable by a \$100 fine, and the operator's city ATV/utility vehicle license shall be impounded for one year from the date of conviction. Penalties for subsequent convictions are not waivable. **PRIOR CONVICTION WITHIN ONE YEAR** shall be measured by the time that passes from the date of conviction of the prior offense to the date of offense for the subsequent offense.

(2002 Code, § 1-9) (Ord. 2011-32, passed 1-17-2012; Ord. 2012-62, passed 1-2-2013)

Statutory reference:

Authority to abate nuisances, see Neb. RS 16-225

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